IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 473 of 1999.

Date of decision: 15 .12.2006.

State of H.P. ... Appellant

Versus

Bakshi Harbans Raj & Others. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. C.B. Singh, Deputy Advocate General.

For the respondents: Mr. Neeraj Sharma vice Mr. Jagdish Vats, Advocate, for the respondents.

V.K. Ahuja, J. (Oral):

This appeal has been filed by appellant/State of H.P. against the judgment of the Court of learned Sub Divisional Judicial Magistrate, Karsog, (Camp at Ani), dated 22.4.1999, vide which the respondents were acquitted of the charge framed under Sections 147, 148, 149, 324, 323 and 506 I.P.C.

Briefly stated the facts of the case are that on 8.1.1996 complainant Girja Devi lodged a report at Police Station alleging that on 31.12.1996 at 8.30 P.M., one Daulat Ram and Dorje Ram came nearby the house of her brother and started abusing them. When she asked Daulat Ram in this regard, he replied that this place was not belonging to her father and Dorje Ram started pelting stones. One stone struck against

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

the wall and second struck against her niece Kumari Dolu Devi. On hearing her cries, her brother and other persons reached the spot and her brother went to the house of Pradhan to enquire about the occurrence since the accused had told that they had been sent by the Pradhan and Up Pradhan. Thereafter on 3.1.1996 also four persons named by her under the influence of liquor came to the site and told them that these foolish people had not casted their votes in their favour despite that they had won the election. They also gave a threat to take away the life while leaving the place. A reference was also made to a occurrence on dated 4.1.1996 during day time when many persons armed with dandas had come to their house whose number was stated to be 15-20 and at that time accused Chander Kala inflicted a blow of danda on the head of the complainant.

On the report, a case was registered. The challan was filed before the learned trial Court who tried the respondents. All of them were acquitted, hence, the present appeal.

I have heard Mr. C.B. Singh, learned Deputy Advocate General, for the appellant and Mr. Neeraj Sharma, learned vice counsel for the respondents and have gone through the record.

The submissions made by the learned Deputy Advocate General were that there is some evidence on record pointing out to the guilt of the accused persons and that needs to be appreciated and as such, the findings to the contrary are liable to be reversed. On the other hand, the learned counsel appearing for the respondents has supported the impugned judgment for the reasons given therein.

On a perusal of the record of the case, it is clear that in the complaint, the complainant had made a reference to the occurrence that

took place on 31.12.1995 at 8.30 P.M. when two persons had come there, gave her abuses and one stone blow had also hit the niece of the complainant. Thereafter, reference was made to the occurrence that took place on 3.1.1996 and 4.1.1996 also. A perusal of the charge sheet shows that the accused persons have been charge sheeted only in regard to the occurrence of 31.12.1995 at about 8.30 P.M. and there is no mention in the charge in regard to the occurrence that took place on 3.1.1996 or 4.1.1996. In regard to the occurrence of 31.12.1996, the names of two persons were only alleged who were present at that time, namely Daulat Ram and Dorje Ram who gave abuses and Dorje Ram gave a blow with stone on the person of complainant's niece. Thus, there were two persons only who participated in the occurrence that took place, but seven persons have been made accused in this case in the challan filed by the learned trial Court. Insofar as the occurrence that took place on 3.1.1996 or 4.1.1996 is concerned, in which number of accused persons was more, the accused persons are not required to explain the said occurrence and the evidence led in regard to the occurrence of these dates is also not relevant since the accused had not been charge sheeted in regard to any other occurrence except 31.12.1995. Therefore, the evidence of the prosecution in regard to the occurrence that took place on 31.12.1995 is relevant, which the accused persons are required to answer.

Coming to the evidence in this regard as mentioned above, PW1 Girja Devi stated about the occurrence of 4.1.1996 which is not relevant. PW2 Ram Dass stated about the occurrence of 31.12.1995 and he was told by his sister Girja Devi that the accused persons had given abuses on the previous night and had given stone blows. It is clear from

his statement that he had learnt about this occurrence and had himself not witnessed the occurrence.

PW3 Sumitra Devi had not stated the date of occurrence but stated that five years ago at 9.00 P.M. Bakshi Harbans, Jindu and Karam Dass came there, gave them abuses under the influence of liquor and then they left the house. She did not corroborate the prosecution story in regard to the occurrence dated 31.12.1995. PW4 Satya Prakash is a witness to the recovery of articles only. PW5 Dolu Devi has made a reference to the occurrence on 31.12.1996 and not 1995 at 8.00P.M. and two of the accused came there, gave abuses and Dorje Ram also threw a stone which hit her arm. She admitted that Girja Devi is her aunt. PW6 Lala Dass had stated about the occurrence of 4.1.1996. The statements of the other witnesses are not material.

From the above discussion, it is clear that there is scanty evidence on record in regard to the occurrence which the accused are required to explain and the said evidence is not such upon which conviction could have been passed by the learned trial Court. The judgment recorded by the learned trial Court cannot be said to be perverse calling for an interference by this Court and as such, those findings are upheld and the appeal filed by the appellant is dismissed accordingly. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

December 15, 2006
(BSS)